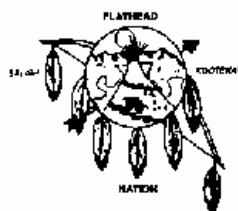


Appendix 5

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

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Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Leon Bourdon - Sergeant-at-Arms



TRIBAL COUNCIL MEMBERS:

D. Fred Malt - Chairman
Jana Haimel - Vice Chair
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Joe Clairmont - Treasurer
Lloyd D. Irvine
Mike Kenmle
Mary Lathand
Elmer "Sonny" Morigeau
James Steele, Jr.
Ron Trahan

August 10, 2004

Mr. Gerald Mueller
440 Evans Avenue
Missoula, MT 59801

Dear Mr. Mueller:

The Confederated Salish and Kootenai Tribes (Tribes) wish to commend you, the members of Clark Fork River Basin Water Management Planning Task Force (Task Force), Mr. Mike McClane of the Department of Natural Resources and Conservation, and the Montana Consensus Council for the tremendous efforts and long hours which you have collectively invested in developing the Clark Fork River Basin Water Management Plan (Plan). The Plan will no doubt serve as a significant nexus, source of information, and point of focus for continued development of water policy. I wish to convey the Tribes' sincere appreciation for the opportunity extended to the Tribes to participate in the Task Force's endeavors.

There are a number of recommendations developed by the Task Force and they are collated and arrayed in Chapter 11 of the Plan. Those recommendations encouraging water conservation and continued hydrologic research particularly relating to groundwater and groundwater-surface water interactions are very valuable and their relevance is immediate. The recommendation to eliminate the 35 gallon per minute (~50,000 gallons/day) exemption is appropriate and should be implemented for the reasons stated in Chapter 11.

Recommendation 9-3 states that the U.S. Forest Service should optimize favorable flow conditions in its management. The Task Force, if it actively advances this recommendation, should provide specific, identifiable instances and examples in the Clark Fork River Basin (Basin) where the Task Force has found that the Forest Service is not complying with the Organic Act as Recommendation 9-3 suggests. The Task Force should provide the Forest Service with the alternative management prescriptions which the Task Force has determined will yield the optimized flows which the Task Force determines are required by the Organic Act. The Task Force should, additionally, explicitly recognize that the Forest Service cannot ignore other applicable federal laws

and treaty's which are binding upon the Forest Service in its management of resources on the National Forests.

The need to complete adjudication in the Basin is a fundamental requirement for effective and rational water management planning. The recommendations found in Chapter 11 to facilitate the adjudication process are important. The Task Force and Plan recognize that even as the completion of Basin adjudication is a fundamental need, the resolution of federal and Tribal reserved water rights is a predicate to the completion of the adjudication process.

The Tribes, as you know, possess reserved water rights on the Flathead Indian Reservation and aboriginal water rights which are pervasive throughout the entire Basin. These reserved and aboriginal rights remain to be quantified, and the Tribes, the United States, and the State of Montana through its Reserved Water Rights Compact Commission are presently in negotiations to effect a quantification and settlement of these Tribal reserved water rights through a compact.

Until the reserved water rights of the Tribes and those of federal agencies are quantified and settled, the adjudication of claims to water in the Basin cannot be completed, nor can the "contracting" for water from a non-adjudicated source occur. Similarly the subordination or purchase, etc., of any water rights would be premature and a potential waste of time and money because, of course, absent final adjudication, no one knows what "water rights" are available. Indeed, a continuing theme in Task Force discussions and deliberations has been the crucial need for Montana to complete an accurate and durable water rights adjudication process to provide for security of existing claims to water and the rational and effective management of the future development of water.

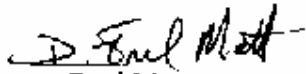
It is appropriate and relevant to point out and emphasize here that this theme was affirmatively advanced by the Tribes during the legislative process involving HB 397, the enabling legislation for the Task Force. The Tribes presented testimony which focused on the necessity to resolve reserved water rights as a predicate to effective planning for water management. The Tribal Council also discussed this with representatives of the Consensus Council during the process of forming the Task Force. The Tribes put the matter then as a succinct question: *"Whose water are you planning with?"* This question remains relevant today.

Basin adjudication and subsequent effective water management planning are dependent upon quantification and settlement of Basin reserved water rights. As I have pointed out above, the Tribes, the United States, and the State of Montana are in the process of negotiating a compact to effect the quantification and settlement of Tribal reserved rights. Because of this ongoing process, the Tribes have determined that it would be premature for the Tribes to sign as accepting the Plan. The Tribes have also determined, for the same reasons, that it would be premature for the Tribes to participate in the implementation phase of the Task Force as contemplated in Chapter 10.

Let me again on behalf of the Tribes extend my sincere appreciation for the opportunity provided to the Tribes to participate on the Task Force in the development of the Plan. There are, and will be many significant challenges for everyone in managing water in the Basin in the future. These challenges will certainly be magnified and multiplied as the continuing and cumulative effects of global climate change, population increases, demographic and land use changes, changes in societal water use values, and

competition for ever dwindling global, regional, and local natural resources are realized. The effective and rational meeting of such challenges will require continued and renewed efforts from all concerned.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Fred Matt". The signature is fluid and cursive, with a horizontal line extending from the end.

D. Fred Matt
Chairman, Tribal Council

cc Representative Verdel Jackson
 Judy Edwards, Montana Consensus Council
 Mr. Mike McLane, DNRC (via electronic mail)
 Task Force Members (via electronic mail)
 Tim Sullivan, Water Team Leader, USFS, Region 1